

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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IN THE MATTER OF: . Case No. 14-11016 (DHS)  
 . Newark, New Jersey  
DOTS, LLC, .  
 . January 22, 2014  
Debtor, .  
- - - - - .

TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE DONALD H. STECKROTH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Rosen/Argument

4

1 MR. ROSEN: Your Honor, would you like me to report  
2 on who is on the phone?

3 THE COURT: Sure, that would be great.

4 MR. ROSEN: Okay. Some people, and after I call the  
5 role, if I've missed anybody's name, please tell me at the end.  
6 You have Lisa Rhodes, the Chief Executive Officer is on the  
7 line. You have Elaine Kapusta, the Chief Financial Officer on  
8 the line. Jim Waldron, the Clerk of the Court today. We have  
9 Michael Axel from Key Bank. Carlo Laning from Key Bank. I  
10 apologize if I'm mispronouncing anybody's name. David Blau  
11 from Clark Hill. Gerry Bender from Lowenstein, with others  
12 from Lowenstein.

13 Tamar Chubinidze Skylar Group. On behalf of the,  
14 what I'll refer to as the junior secured lender, we have Paul  
15 Hollander, Greg Kinoian, and Jim DeLuca. For various  
16 landlords, Robert LeHane from Kelly Drye. Don MacMaster from  
17 the U.S. Trustee. Paul Magy for various landlords. David  
18 Pollack for various landlords. Kyle Shonak and Jonas McCraigs  
19 from Salus Capital. And then you have from Morgan Lewis and  
20 Bockius on behalf of Salus, Wendy Walker, Sandra Vrejan,  
21 Patrick Fleming.

22 In the room with me today is Perry Mandarino, Perry  
23 is with PriceWaterhouse Coopers. Also with me is Andrew  
24 Behlman, Shirley Dai, and Wojeich Jung. Is there anybody's  
25 name who I did not call? Okay. Your Honor, if it pleases the

Rosen/Argument

5

1 Court, my understanding, and I thought I should make this  
2 announcement, is that Mr. Waldron has arranged for this  
3 conference call to be recorded. So everybody should be aware  
4 of that. I appreciate Mr. Waldron's helping us out in that  
5 regard under the circumstances.

6 What we were going to do is take a few moments just  
7 to sort of make a little bit of an introduction about the case,  
8 with the understanding that we will be before Your Honor at one  
9 o'clock tomorrow. And that this teleconference hearing is sort  
10 of in the nature of you know, it's really an accommodation  
11 given you know, weather conditions, the courts are closed.  
12 It's an accommodation to help us you know, sort of get a bridge  
13 till tomorrow when Your Honor will have a much better  
14 opportunity to have a complete hearing.

15 And speaking on behalf of the debtor we greatly  
16 appreciate that.

17 THE COURT: Let me just comment, so everybody is  
18 aware, the cases were filed, I guess yesterday or perhaps the  
19 evening before. And I became aware of it yesterday morning.  
20 And we were also aware of the impending storm at the time, it  
21 was about 10 o'clock. The courthouse was preparing to close  
22 around noon. I called debtor's counsel because I had looked at  
23 the first day application and asked, when do we really need  
24 this hearing. Absent the storm we would have had the hearing  
25 in court today, if it was necessary, this afternoon, if not

Rosen/Argument

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1 tomorrow. I was suggesting that we set it sometime on Thursday  
2 because of the storm. And the likelihood that the three  
3 Federal courthouses in New Jersey would be closed today.

4 Mr. Rosen indicated that the real, the immediate  
5 concern is a practical one, there was payroll due today. So we  
6 were dealing with a payroll application and order. It was for  
7 that reason that I suggested we try to have this call. So  
8 interim relief could be granted if you will, limited to the  
9 payroll application, some basic orders, like complex case  
10 status and joint administration. There's also, as I understand  
11 it, a concern because of what I would might want to call the  
12 gift card motion for lack of a better term. And then I guess  
13 we have to deal a bit with the financing to authorize or make  
14 sure that the folks are allowed to be paid today under the  
15 payroll order.

16 Everything else is scheduled for tomorrow as you  
17 know, at I think one o'clock, when we'll be in court, be able  
18 to make a full record. Everyone will have an opportunity to  
19 fully have their say. But I wanted to indicate for the record  
20 the genesis of today's emergent if you will, relief, and the  
21 limited nature of what I believe this call should deal with.

22 Ken, why don't you tell us a little bit about the  
23 underlying facts, the reasons for filing and where the debtor  
24 intends to head in this case.

25 MR. ROSEN: Certainly. By way of some background,

1 the target audience for Dots is women 25 to 35 years old.  
2 Store count is at the end of 2013 was roughly 405 locations.  
3 Sales, net sales for 2013 were about 300 million. Net sales  
4 for fiscal 2014, which ends in a couple of weeks, is about 250  
5 million.

6 The 400 stores are spread out in a 28 State  
7 footprint. Typical target community is a population exceeding  
8 75,000. Median age of the customer is below the age of 40.  
9 Company was founded in 1987 outside of Cleveland. Starting in  
10 2008 Dots began launching products under their own label. And  
11 then shortly thereafter upgraded its headquarters to about  
12 190,000 square foot campus and distribution facility in  
13 Glenwillow, Ohio.

14 In 2011 the company, Dots, was acquired by Irving  
15 Place Capital, which is a leading middle market private equity  
16 firm. In terms of the real estate, the locations are high  
17 traffic strip centers. Target community is 75,000 people or  
18 more. Typical lease is five years with renewal options.

19 The key management team, two of whom I mentioned a  
20 moment ago, is Lisa Rhodes who is the Chief Executive Officer.  
21 Lisa joined the company in August of 2012. Prior to that she  
22 was a senior vice president of WalMarts U.S. Apparel  
23 Merchandising Division. And prior to that she was an executive  
24 vice president, chief merchandising officer, of Maurice's,  
25 which was another specialty retailer of women's clothing.

1 I mentioned Elaine Kapusta, Chief Financial Officer.  
2 Elaine has been with Dots since 1994. And before serving as  
3 CFO, was a VP of finance and controller. Prior to that she  
4 spent a tenure with Ernst and Young, most recently as a senior  
5 manager.

6 And then the third member of key management is Lisa  
7 Sirella (phonetic), she joined Dots in September of 2012.  
8 Prior to that she was the merchandising manager for a chain of  
9 retail stores called Five Below. And she also has experience  
10 at WalMart.

11 In terms of our workforce, one of the reasons that  
12 we're here this morning, Dots has about 3500 individuals in  
13 their stores. And the 3500 is roughly broken out, 1250 full  
14 time employees, 2250 part time employees.

15 The strategy for the case is to bring about a sale of  
16 the company as a going concern. Perry Mandarino from  
17 PriceWaterhouse Coopers is the engagement partner on the file.  
18 His team is the group that led the project of negotiating DIP  
19 financing terms with our secured creditors. The cash flow  
20 budget is the result of the PWC efforts, along with obviously  
21 Lisa and Elaine. And Perry is with us this morning.

22 Perry's office, I apologize for using first names,  
23 Mr. Mandarino's office has prepared a teaser which went out to  
24 about 200 potential suitors. I learned this morning from Mr.  
25 Mandarino that we have about 25 signed non disclosure



1 agreements. There's a confidential information memorandum that  
2 PriceWaterhouse is working on for the people that, you know,  
3 that get to the next level of due diligence. And that process  
4 also is underway.

5           You will see that we retained a claims processing  
6 agent, or seeking to retain, I beg your pardon, a claims  
7 processing agent which is Donlin Recano. Prior to the  
8 commencement of the bankruptcy case, we established a, I guess  
9 you would call it a virtual due diligence room. Donlin Recano  
10 effectuated that. And the PriceWaterhouse team then populated  
11 the due diligence room with several hundred documents. And  
12 PriceWaterhouse has been overseeing the process of who gains  
13 access to the due diligence room and followup questions.

14           The agenda for the case, as I mentioned, is to find a  
15 buyer for the company, for the debtor as a going concern. You  
16 heard me mention that we have 3500 employees. You heard me  
17 mention that we have 400 locations. It wouldn't come as a  
18 surprise that we want to preserve as many jobs as possible,  
19 preserve a customer for our creditors. Also avoid as many  
20 lease rejections and the damage claims that would result from  
21 that as is possible.

22           So over the next, I'll say 30 days, the real energy  
23 of this case will be led by, will be the efforts, you know, to  
24 bring someone to the table as fast as possible. I believe we  
25 have a target date roughly in four weeks, to identify an

Jung/Argument

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1 appropriate purchaser. And if I recall correctly, I don't have  
2 the paper in front of me, we have a March 4th deadline for  
3 accomplishing the sale of the debtor's business.

4 So we have a lot of to do. But I think we're pretty  
5 well poised for that. Your Honor, that sort of concludes the,  
6 my general introduction, if that's okay.

7 THE COURT: All right. Thank you. Why don't we  
8 just move on. There's a couple of fairly routine matters. The  
9 complex case status order and the joint administration order,  
10 I've reviewed those and they are routine. I would suggest I  
11 would enter those. Does anyone have any objection to those  
12 applications being granted?

13 MR. MacMASTER: No objection from the U.S. Trustee,  
14 Your Honor.

15 THE COURT: All right. So I'll enter the complex  
16 case order and the joint administration order. The third  
17 application we should talk about is the authorization to pay  
18 employee obligations. Mr. Rosen, will you briefly introduce  
19 that?

20 MR. ROSEN: Yeah, Your Honor, Wojciech Jung, who's  
21 sitting next to me, will be addressing that motion. And it's  
22 Wojciech, W O J C I E C H, Jung, J U N G.

23 MR. JUNG: Thank you, Ken. Your Honor, for the wage  
24 motion which is docketed at docket number 5, the company seeks  
25 the authority to pay its prepetition wages for its employees,

1 salaries and related thereto obligations and taxes. And  
2 requesting that the bank be permitted to honor any checks  
3 issued on account of those.

4 Your Honor, as Mr. Rosen mentioned, the company has  
5 3500 employees. Biweekly payroll, Your Honor, is appraisal  
6 \$2.55 million. The company uses ADP to process payments to  
7 their employees. Your Honor, as part of the employment, the  
8 company offers various benefits to its employees. Including  
9 but not limited to healthcare and welfare, workers  
10 compensation, the discretionary 401k matching. And the company  
11 also reimburses employees for their business expenses incurred  
12 on the company issued American Express credit card.

13 Your Honor, as is often happens, although the credit  
14 cards is in the company's name, individual holders of those  
15 credit cards are liable for those expenses as well. Henceforth  
16 our request that those expenses be paid, Your Honor, post  
17 petition.

18 Your Honor, I'm more than happy to go through  
19 individual numbers for the line items, if Your Honor wishes.

20 THE COURT: No, let me just, I reviewed the  
21 application. There will be no payments beyond the statutory  
22 exemption, correct?

23 MR. MacMASTER: My understanding -- this is Don  
24 MacMaster, U.S. Trustee. It's my understanding they're seeking  
25 to pay the CEO beyond the statutory limits.

Jung/Argument

12

1 MR. JUNG: Yes, Your Honor, the CEO compensation is  
2 the only compensation which we seek to honor in excess of the  
3 limits. Your Honor, by, just by the nature of the compensation  
4 itself, and by the, and due to the heavy workload that will be,  
5 or has been placed on the CEO already, Your Honor, we believe  
6 that it is more reasonable to honor that compensation excess of  
7 the -- and Your Honor, I should also mention that Ms. Rhodes is  
8 not an equity holder of the debtor, she is the CEO.

9 THE COURT: Anyone have any objection?

10 MR. MacMASTER: Your Honor, it's Don MacMaster,  
11 again, my only comment to that is, I think this is a  
12 negotiation that should be had between the debtor and the  
13 Committee, when the Committee is appointed. This is day two or  
14 three of the case, I don't see the harm in holding off for two  
15 weeks on a ruling on whether she should be paid above and  
16 beyond the statutory limits.

17 MR. JUNG: Your Honor, and in response, this is  
18 clearly an ordinary course payment and we don't want to be  
19 faced with a situation where, you know, other employees see  
20 that their top person is not getting paid, it may send the  
21 wrong message, Your Honor, to the workers.

22 MR. MacMASTER: With all respect, Mr. Jung, I think  
23 when they all see that they're getting paid in full they're be  
24 perfectly fine with it.

25 THE COURT: Anybody else have a comment? I'll

1 authorize the payment of up to the statutory exemption,  
2 including limiting that for the Chief Executive Officer. We  
3 can carry the motion to a further day after the Committee is  
4 selected, as the U.S. Trustee suggested. And I'll be happy to  
5 revisit that again, if the Committee has no objection.

6 MR. MacMASTER: Thank you, Your Honor.

7 MR. ROSEN: Your Honor, next I think on the agenda is  
8 the DIP financing. If I could impose upon Your Honor, up to  
9 the -- I beg your pardon, the customer program motion was next  
10 on the agenda. But if I could impose on Your Honor, there is  
11 another motion that I would ask if the Court might consider  
12 this morning. And that's the cash management motion. That is  
13 important in terms of the debtor continuing to operate in the  
14 ordinary course, including but not limited to issuing  
15 paychecks. So I apologize for the inconvenience, but if  
16 perhaps the Court could entertain that this morning.

17 THE COURT: I'm taking a look at it now. I haven't  
18 seen it.

19 MR. MacMASTER: And to --

20 THE COURT: I'll take a look at that right now, why  
21 don't we move on to the gift card motion while I review that.

22 MR. JUNG: Thank you very much. Wojciech Jung for  
23 the record, Your Honor. Your Honor, to this motion which is  
24 docketed at docket number 10, the debtor seek authority to  
25 honor the prepetition obligation with respect to the customer

Colloquy

14

1 program. As Your Honor referenced early on, those obligations  
2 include gift cards, store credit, refund policy, their  
3 obligations under or related to the private label, credit cards  
4 as well as honoring various vouchers issued in connection with  
5 the company's marketing activities.

6 Your Honor, we don't believe we seek anything that  
7 extraordinary in this relief. All the obligations are below  
8 the statutory cap and Section 507(a)(7). And unless Your Honor  
9 has any questions, we respectfully request that this motion be  
10 granted.

11 THE COURT: All right, any comment on that motion?

12 MR. MacMASTER: No objection from the U.S. Trustee,  
13 Your Honor.

14 THE COURT: All right, I reviewed that motion, it's  
15 relatively standard form, I'll be happy to sign that order.

16 MR. JUNG: Thank you very much.

17 THE COURT: Mr. Rosen, I've had an opportunity to  
18 take a look at least at the proposed order that has been  
19 provided on the cash management application. I don't know if  
20 Mr. MacMaster has seen it. It seems to be --

21 MR. MacMASTER: I'm just kind of looking through it  
22 right now, Your Honor. I mean, it's got the 60 day carve out  
23 for the U.S. Trustee to object.

24 THE COURT: Exactly.

25 MR. MacMASTER: It says they're replenish their stock

Axel/Argument

15

1 with debtor in possession logo once they run out. On the face  
2 of it, again, this is just a very cursory look at it, I don't  
3 have any objection to it.

4 THE COURT: All right, I'll grant that. It looks  
5 like it's in the standard form, and it has the 60 day period  
6 for the U.S. Trustee's Office to further examine, which is  
7 their usual requirement.

8 MR. AXEL: Your Honor, excuse me, may I be heard?

9 THE COURT: Sure.

10 MR. AXEL: Michael Axel, I represent Key Bank  
11 National Association, which is one of the cash management  
12 depository banks. Your Honor, I am not admitted before the  
13 Court's bar and would request oral pro hac vice admission for  
14 purposes of today's hearing.

15 THE COURT: That's fine, go ahead, counsel.

16 MR. AXEL: Thank you, Your Honor. As I said, Key  
17 Bank holds six of the debtor's depository accounts, including  
18 gift card accounts, concentration accounts, store depository  
19 accounts. And there are various issues with respect to  
20 depository banks of debtors in possession that arise in a  
21 Chapter 11. Such as daylight overdrafts, charge backs from  
22 credit card processing that can come back and hit the accounts,  
23 creating the potential overdraft situations.

24 I would ask therefore, and request, either that the  
25 Court, if it decides to grant the motion today, make it in

Axel/Argument

16

1 interim order, akin to the DIP financing and cash collateral  
2 arrangement. And set the matter for final hearing on a fairly  
3 short notice, simply to give Key Bank a chance to discuss with  
4 debtor's counsel and file any responses that are necessary and  
5 appropriate.

6 MR. ROSEN: Your Honor, this is Ken Rosen. We don't  
7 have a problem with that. We're happy to talk to Key Bank's  
8 counsel. Perhaps we could schedule the next hearing date on  
9 this motion for whenever we schedule the next hearing on the  
10 DIP financing.

11 THE COURT: That's fine, okay.

12 MR. AXEL: That's fine, I appreciate that. And if  
13 the Court is willing to indulge just with the understanding  
14 that Key Bank you know, reserves all of its rights with respect  
15 to the cash management motion and order.

16 THE COURT: All right, I'm going to enter the order  
17 that was presented with the motion, I'll make it interim in  
18 nature. And the final hearing will be subject to the day we  
19 set for final hearing on that financing. And in the interim I  
20 certainly would expect and assume that counsel for Key Bank and  
21 any other depository would be in communication with debtor's  
22 counsel and attempt to resolve any concerns that they have.

23 MR. ROSEN: Yes, Your Honor. Thank you.

24 THE COURT: You're welcome.

25 MR. AXEL: Thank you.



Bender/Argument

17

1 MR. ROSEN: If it pleases the Court, I would like to  
2 ask Gerry Bender to present the motion on the DIP financing.

3 THE COURT: Okay. Fine.

4 MR. BENDER: Good morning, Your Honor, Gerald Bender,  
5 Lowenstein Sandler. Your Honor, I too have, am not admitted in  
6 New Jersey, but we had filed a pro hac motion with the Court,  
7 and I just wanted to advise you and ask if I could present this  
8 motion.

9 THE COURT: Certainly. Absolutely. Please proceed.

10 MR. BENDER: Thank you. As Mr. Rosen said before, we  
11 got on the phone with Perry Mandarino from PWC and also Lisa  
12 Rhodes who is the debtor's CEO, and they're both available in  
13 connection with this motion to provide information or even  
14 testimony if it's required. Although I suspect we'll get to  
15 that at a later date.

16 Also on the phone are Wendy Walker from Morgan Lewis  
17 on behalf of Salus, the DIP lender. And Mr. Paul Hollander on  
18 behalf of the junior prepetition secured creditor, IPC. And I  
19 wanted to invite them, if I misspeak or if they want to  
20 supplement or say differently something I'm saying, I wanted to  
21 invite them to feel free to interrupt and say what they'd like  
22 to say.

23 As Your Honor can probably tell from the flurry of  
24 filings in connection with this motion, it's been fairly  
25 active, including probably till about two o'clock or later last

Bender/Argument

18

1 night with some changes to the credit agreement and the  
2 proposed interim DIP financing order. So when I get to it,  
3 I'll be happy to walk Your Honor through those changes or to  
4 address the substance of those changes.

5 THE COURT: Yes, let me ask this. Is it necessary to  
6 have this order entered today, as opposed to tomorrow?

7 MR. BENDER: It is mostly in connection with the need  
8 to fund the wages and to get the employees paid, Your Honor.  
9 That's the impetus for having it heard today versus tomorrow.

10 THE COURT: All right. We can't enter some kind of  
11 one day order till tomorrow? Because no one has really had an  
12 opportunity to take a look at the revised documents that you  
13 filed at two o'clock in the morning or whenever.

14 MR. BENDER: Well you know --

15 THE COURT: I understand it's interim. But --

16 MR. BENDER: And the changes that were filed relate  
17 to mostly professional fees and the interactions with the  
18 junior secured creditor, who's on the phone and obviously is  
19 fully aware of that. We actually had incorporated a comment  
20 from one of the attorneys for landlords late last night as  
21 well. So I don't think there's anything that was changed in  
22 the order that would, that could affect anybody other than the  
23 parties who are on the phone quite frankly.

24 THE COURT: All right. Proceed.

25 MR. BENDER: Well, I'm not going to belabor the

1 debtor's need for financing or repeat what Mr. Rosen said  
2 earlier in his introduction. The financing is meant to enable  
3 the debtors to, honestly operate in the ordinary course, meet  
4 the ordinary course obligations, including payroll, funding  
5 working capital, buy inventory and the like. But also to get  
6 us through a proposed sale process as contemplated by the  
7 credit agreement and the DIP financing order. The debtor  
8 proposes to sell its assets pursuant to Section 362 of the  
9 Bankruptcy Code.

10 And this financing will allow the company to operate  
11 in the ordinary course, pending that sale process so that we  
12 can maximize the value of that sale for the benefit of all the  
13 debtor's stakeholders.

14 In connection with prepetition efforts regarding  
15 proposed financing, debtor in possession financing, the debtors  
16 and their advisors, particularly PWC who's the proposed  
17 financial advisor and investment bank for the debtors, we  
18 reached out to a number of other putative lenders to engage  
19 with them perhaps to see if they'd be willing to provide  
20 financing to the company. And there are confidentiality  
21 agreements entered into and various discussions had with a  
22 number of parties, none of which resulted in an offer to  
23 provide financing on terms that are better than what's been  
24 proposed by the debtor's existing prepetition secured lender.

25 Which is not surprising, given the fact that any such

1 financing would require either the paying off of the existing  
2 prepetition financing or the priming of that lender, and given  
3 that we're bridging to a sale on a fairly short time frame, it  
4 probably is self evident that it makes sense for the existing  
5 lender to fund that process.

6 Just to describe the prepetition capital structure,  
7 we have senior secured debt provided by affiliates of Salus  
8 Capital Partners. There's a revolver with a maximum principal  
9 amount of \$35 million that's about 14 and a half million of a  
10 prepetition balance with respect to that. There's a \$16  
11 million term loan which has original principal amount of \$16  
12 million, and there's a little over \$16 million of a balance  
13 there, for a total of approximately \$30.5 million of  
14 outstanding debt to the Salus companies.

15 There's also, as was mentioned before, junior secured  
16 debt through affiliates of Irving Capital, IPC, in the  
17 aggregate amount of approximately \$17 million, or actually \$17  
18 million outstanding. The proposed DIP financing is a \$46  
19 million facility, a senior secured credit facility consisting  
20 of a \$20 million revolver and a \$16 million term loan.

21 The bulk of those loans are proposed to rollout, the  
22 revolving facility would rollout as it does, over time as  
23 receipts come in. Salus will fund the debtor, the debtor's  
24 operation and as receipts come in they will, they'll be able to  
25 pay down the prepetition revolver. And new revolving funds

Bender/Argument

21

1 will be lent under the facility. And it will probably take  
2 about four to five weeks for the old revolving facility to roll  
3 through. Which propose that the prepetition term loan will be  
4 rolled up through a borrowing at the time of the final hearing  
5 and final approval of the DIP financing. So that at that  
6 point, all of the prepetition debt will be taken care of and  
7 there will be DIP loans outstanding at that point.

8 Obviously the loan also contemplates the use of cash  
9 collateral by the debtors on a cash collateral revolvency.  
10 Cash collateral of both the prepetition senior secured and the  
11 prepetition junior creditor. So there's also the contemplated  
12 provision of adequate protection for the use of that cash  
13 collateral to both the senior lender and the junior secured  
14 lender.

15 THE COURT: Right.

16 MR. BENDER: Which is set forth in the credit  
17 agreement. Obviously both the loans and the adequate  
18 protection are subject to the carve out which is provided for  
19 in the DIP financing order. And there is, as is typical, the  
20 ability to pay professionals in the ordinary course pending a  
21 carve out trigger event in which case the carve out gets  
22 triggered and there's recourse to that.

23 And some of the changes that I think has seen, that  
24 I'll go through in a minute, with respect to the DIP financing  
25 order, relate to the mechanisms for funding professional fees

1 and dealing with the carve out.

2 In addition, and this is probably the other area that  
3 Your Honor will see that there's a change made to the DIP  
4 financing order and the credit agreement, relate to the  
5 provision of credit support provided by IPC to Salus, to the  
6 DIP lender, and requested by Salus. They indicated that they  
7 would not be willing to provide the DIP financing without some  
8 measure of credit support provided by the preexisting equity  
9 sponsor here. And IPC agreed to provide a million and a half  
10 dollars of such credit support pursuant to an agreement that is  
11 going to be entered into between IPC and Salus. They were  
12 able, have been working on that. It's not yet complete. But  
13 it is reflected in the credit agreement and the DIP financing,  
14 and there is a condition and a covenant agreement that will be  
15 entered into by this Friday. And if it's not entered into by  
16 Friday, then it will be a default under the credit agreement.

17 So the parties are working hard to get that  
18 participation done. It's structured as a participation,  
19 initially in a prepetition loan which would convert to a  
20 participation, the DIP term loan, once the DIP term loan is  
21 rolled up at the final hearing under a consent and modification  
22 agreement. And there is, and I would draw Your Honor's  
23 attention to it. In paragraph 44 of the proposed DIP order,  
24 there is language requested by IPC with respect to that  
25 proposed credit support in the nature of confirmatory language.

1           They wanted to clarify that this new credit support  
2           that they're providing isn't going to be made subject to the  
3           existing creditor agreement between the senior and the junior  
4           prepetition lenders. And I also wanted it to be made clear  
5           that subject to the challenge rights that are provided in the  
6           DIP financing for the Creditors Committee and others to review  
7           liens and challenge them, generally, they wanted it to be made  
8           clear that this participation, once provided, couldn't be  
9           challenged because it's new money being put up by IPC and it  
10          doesn't relate to the prepetition and junior secured loan,  
11          other than it's being put up by related entities.

12           So IPC wanted comfort that in providing this post  
13          petition credit support they would not be opening themselves up  
14          to an attack with respect to it. And this doesn't prejudice  
15          any, as I said before, the Creditors Committee or other  
16          parties' rights with respect to the challenge period in the  
17          prepetition loans. So I wanted to draw Your Honor's attention  
18          to that specifically.

19           To also address the additional provisions in the  
20          financing that are required to be highlighted of the local  
21          Bankruptcy Rule 4001-4. I wondered if I could take the Court  
22          through those quickly. I mentioned the fact that they could  
23          roll up involved in this financing, a revolver rolling up in  
24          the ordinary course of the term loan being replaced, if you  
25          will, at the time of the final hearing and the final order.

1           There are proposed waivers and concessions with  
2       respect to the validity of the prepetition debt as is typical  
3       of a debtor stipulated to the amount, nature and extent of the  
4       prepetition secured creditors lien and security interests. And  
5       of course there's the provision of a Committee challenge  
6       period, or if there's no Committee, for other parties in  
7       interest to challenge. The Committee would have 60 days, other  
8       parties in interest would have 75 days from the entry of the  
9       final DIP order to challenge the prepetition party's liens and  
10      security interests under the prepetition credit documents.

11           There is the provision for a 506(c) waiver in  
12      connection with the financing. There is the provision of, to a  
13      DIP lender of liens on avoidance actions. There are I think  
14      fairly typical defaults and termination provisions, although I  
15      did mention a default provision with respect to not getting  
16      this participation agreement done. And there are also default  
17      provisions with respect to milestones which Mr. Rosen alluded  
18      to before, that have to do with the timing and the process for  
19      selling the debtor's assets. There are, there's a schedule  
20      6.23 of the credit agreement that deals with various milestones  
21      relating to the admission of motion dealing with bidding  
22      procedures. And ultimately the conduct of a Section 363 sale  
23      of the assets, and the timetable for that process, which the  
24      debtors have committed to meet. So I wanted to draw Your  
25      Honor's attention to those matters as well.



1           Otherwise the motion puts forth all of the various  
2 terms of the proposed financing, which are set forth at length  
3 in the motion, and if Your Honor would like I could go through  
4 them. But I think they're fairly typical and straightforward.  
5 But if Your Honor has any specific questions about the terms  
6 I'm happy to address them.

7           I've now talked a little bit, I'm happy to answer  
8 questions, I'm happy to defer to Mr. Hollander or Ms. Walker if  
9 they want to supplement anything I've said. I think I  
10 mentioned this, -- before I do that. I think I mentioned that  
11 we had made one change which I think is not reflected in the  
12 markups that we sent to Your Honor with respect to requests for  
13 some slightly changed language in one of the provisions dealing  
14 with the lender's rights to exercise remedies and enter  
15 premises. There was language requested by an attorney for some  
16 of the landlords to just clean up that language and change that  
17 language a little bit. And we made that change.

18           And with that Your Honor, I could take you through  
19 that or I can take you through a black line of the changes to  
20 the DIP financing, or answer questions. Whatever the Court  
21 would prefer.

22           THE COURT: You know, I'm always concerned on these  
23 applications when no one's had, in all candor, just because of  
24 the weather, you know, a reasonable time to review these. And  
25 we don't have a Committee in place. So has the U.S. Trustee

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1 has an opportunity to review these?

2 MR. MacMASTER: I've reviewed the original order that  
3 was filed. I don't know that I've seen in detail, reviewed the  
4 most recent version. I don't know what all the markups are.  
5 But you know, I've got some questions as to you know, could  
6 they explain what paragraph 29 is intended to mean on page 40  
7 of the version I'm looking at, use of the DIP facility.

8 THE COURT: You're talking about the order?

9 MR. MacMASTER: Yeah, yes, Your Honor.

10 THE COURT: What paragraph?

11 MR. MacMASTER: It's paragraph 29, prohibited use of  
12 the DIP facility. I understand that the Committee's allowed to  
13 investigate the liens. I'm not sure what paragraph 29 means.  
14 Are they going to be allowed to investigate them, but they  
15 can't file anything adverse to the liens? I'm trying to --

16 MR. BENDER: That's right, I think it's a fairly  
17 typical provision that allows the Committee to investigate  
18 liens, but not to use the lender's money to finance an action  
19 against the lender to avoid those liens. So if the Committee  
20 wants to pursue an action, they'll have to either get  
21 permission from the lender to use their funds, or fund it  
22 themselves.

23 MR. MacMASTER: So they can take discovery, they  
24 could take depositions, they could serve 2004s or whatever?

25 MR. BENDER: Yeah, I'm happy to cede to Ms. Walker if

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1 she wants to address the extent of the provision.

2 MR. MacMASTER: I mean I know that 50,000 is going to  
3 go a long way for the Committee, the carve out.

4 MS. WALKER: Your Honor, this is Wendy Walker at  
5 Morgan Lewis for Salus, the proposed DIP lender. Your Honor,  
6 the paragraph, the \$50,000 that Mr. MacMaster just referred to,  
7 is what used to be known as the burial expenses, if the case is  
8 converted. There is a carve out up to \$50,000 to pay for the  
9 Trustee's expenses.

10 Paragraph 29, as Mr. Bender said, is designed to  
11 protect the DIP lender from having the proceeds of his loan  
12 used to sue it, or bring an action against it. And I certainly  
13 acknowledge that it is usual to have an investigation budget  
14 for a Committee. We don't have that provided for here. But  
15 I'm happy to add it.

16 THE COURT: All right. Well, you know, in all  
17 candor, these are the type of things that are troubling. And  
18 this is why I want a quick hearing on the final order that's  
19 got to -- Mr. MacMaster, do you have any idea when you'll be  
20 able to schedule the Committee meeting?

21 MR. MacMASTER: Your Honor, I mean, we've been  
22 basically closed just like the Court has, since yesterday.  
23 Obviously I'd want to have it within the next 15 days. I mean  
24 I haven't even looked at the top 30 list to see where people  
25 would be coming in from.

Colloquy

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1 THE COURT: Okay.

2 MR. MacMASTER: So, but certainly within the next two  
3 weeks would be my goal. Preferably within the next ten days.  
4 But I just haven't been able to work that out yet.

5 THE COURT: Right. That's the type of provision in  
6 all candor, that as soon as the Committee takes a look at it  
7 we're either going to have objections at the final hearing, and  
8 they're going to sit down with the lender, the DIP lender and  
9 the debtor's counsel, and work out a resolution. There's other  
10 things in here that are going to change and I'd be shocked if  
11 that doesn't happen. So does anyone else have an objection to  
12 the order entering and an early hearing date on a final  
13 hearing?

14 MR. LeHANE: Your Honor, this is Robert LeHane.

15 THE COURT: Yes.

16 MR. LeHANE: Your Honor, first of all I wanted to  
17 thank Ms. Walker on behalf of several of our landlords, I  
18 actually did reach out to her last night about paragraph 24,  
19 and had some cleanup language they quickly responded to that.

20 THE COURT: Good.

21 MR. LeHANE: We did have some questions though.  
22 Maybe I missed it, we've only had a little bit of time with the  
23 papers. But we didn't see any statement anywhere in the papers  
24 of an estimated asset value, total asset value for the debtor.  
25 So that's just a question I had.

1 But one other issue, and it sounds like it may have  
2 been put in a revised agreement, was with respect to the credit  
3 support and the post petition lending pursuant to an agreement  
4 that hasn't yet been executed. It sounded to me like there  
5 would be a right for the Creditors Committee to challenge that  
6 later on, but not other parties. And that's I guess another  
7 provision I would request that any parties have a right to  
8 challenge that since it sounds like an agreement that hasn't  
9 yet been executed.

10 And my clients may want to be on that Committee, but  
11 I don't know who's going to be on that Committee. And I don't  
12 know what position I'll take with respect to that. And I think  
13 under the circumstances it would appropriate to have a complete  
14 reservation of any party's rights to object to sponsorship  
15 participation post petition being essentially approved in no  
16 parties except for the Committee having a right to challenge  
17 that at this early stage of the case.

18 MR. HOLLANDER: Your Honor, this is Paul Hollander on  
19 behalf of the prepetition junior secured parties. As Mr.  
20 Bender explained that the DIP lender, Salus, has conditioned  
21 its willingness to make a DIP loan on the prepetition junior  
22 secured lender's providing basically a backstop which has taken  
23 the form of a participation interest in the \$16 million term  
24 loan. And that request really has been evolving and is still  
25 being, it's been approved in principle by my client, that

1 they're prepared to purchase a \$1.5 million participation in a  
2 term loan, and we're in the process of trying to document the  
3 specific terms and conditions and provisions of a participation  
4 agreement.

5 And the provision in the DIP loan order, I think it  
6 was paragraph 44 that Mr. Bender made reference to, and maybe,  
7 I think he clarified it, but perhaps maybe I'll try again. As  
8 the proposed participant in the term loan, we recognize that  
9 whatever rights the statutory Committee might have to challenge  
10 the term loan, they have those rights. And we're buying a  
11 participation in the term loan subject to whatever rights a  
12 Committee has to challenge the term loan generally as to  
13 whoever -- basically challenge the term loan generally.

14 What we are trying to protect in the language in  
15 paragraph 44 is simply that because the junior, prepetition  
16 junior secured parties are purchasing this participation  
17 interest, we don't want anybody to challenge our participation  
18 interest, which is between us and Salus, or the entity that the  
19 Salus entity that will be selling us the participation. So  
20 that in other words we don't want to invest a million and a  
21 half dollars to provide support for the DIP loan in that  
22 fashion. So that the DIP loan can be made and the company can  
23 pursue its efforts to reorganization through this sale process,  
24 and then find out that somebody is going to attack our  
25 participation or try to treat us as a participant in the term

1 loan differently than the rest of the holders of the term loan.

2 We're accepting that we're going to be treated just  
3 like the rest of the holders of the term loan, and if the  
4 Committee has a problem with the term loan in its entirety,  
5 those rights are reserved and I believe that the language in  
6 paragraph 44 certainly reflects the best efforts of the debtor,  
7 myself and the Morgan Lewis quarter to make it clear that that  
8 was preserved.

9 But again, we don't want anyone taking a shot at us  
10 for the million and a half dollars that we're investing in a  
11 participation by trying to attack a participation agreement  
12 itself.

13 THE COURT: All right.

14 MR. HOLLANDER: That's all that we're trying to -- I  
15 don't know the gentleman who represents the landlords, whether  
16 that in any way clarifies what we're looking to accomplish, or  
17 whether he has any other questions about that.

18 MR. ROSEN: This is Ken Rosen, just to make sure  
19 we're clear on this. And this is for Mr. LeHane's benefit.  
20 The one and a half million as Mr. Hollander explained, is new  
21 money coming in, you know, hereafter. The rights of whatever  
22 appropriate party to examine, to challenge, to review the  
23 prepetition secured claims of what I'll call the IPC  
24 affiliates, are not, Mr. Hollander is not asking that any of  
25 those rights be limited.

Hollander/Argument

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1 MR. HOLLANDER: This is Mr. Hollander speaking. I  
2 agree with what Mr. Rosen just said. There was nothing in this  
3 order that was intended, or by its language tries to insulate  
4 the prepetition junior secured parties or their claims on  
5 account of their prepetition loans.

6 THE COURT: All right.

7 MR. HOLLANDER: At this time the million five in new  
8 money that we're being asked to advance by a deadline of  
9 Friday, assuming we can get all the documentation in place.

10 MR. MacMASTER: Mr. Hollander, this is Don MacMaster,  
11 I take it this new money is going to the debtor?

12 MR. HOLLANDER: It is going to the DIP lender in  
13 order to provide credits for, so that they'll make the DIP  
14 loan, Mr. MacMaster. In other words, they were not willing to  
15 make the DIP loan in the form that it presently exists, without  
16 the prepetition junior secured creditors providing some credit  
17 support. And after negotiations which really began last  
18 Thursday, that credit support is taking the form of the  
19 purchase of a participation interest in the prepetition term  
20 loan. So it's new money as far as our clients are concerned.  
21 But we're buying a portion of the prepetition term loan. And  
22 it's the only way, I believe, and the Salus people are  
23 certainly capable of speaking for themselves, the only way on  
24 which they were willing to make the DIP loan on the terms that  
25 are in front of the Court and which will allow for this orderly



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1 sale process.

2 THE COURT: Does anybody else have any comments?

3 MS. WALKER: Just one more, Your Honor. And in the  
4 nature of administrative, this is Wendy Walker from Morgan  
5 Lewis for Salus. I understand that Lowenstein is going to file  
6 a revised form of interim DIP order reflecting the change to  
7 paragraph 24 that we made at Mr. LeHane's request last night.  
8 The DIP credit agreement is going to close this afternoon, or  
9 people are going to try and have a close this afternoon so that  
10 the employee wages can be paid, among other things. There will  
11 be some clarifying changes to the DIP credit agreement to deal  
12 with things like the fact that the cash management order is  
13 entered on an interim basis today, with a final hearing to  
14 follow. What I would propose, if it's acceptable to everybody  
15 else is that when the revised DIP order is filed, the revised  
16 credit agreement can also be filed with the clarifying changes.

17 THE COURT: That's fine, when can you do that?  
18 You're trying to get this done today, right? Do you need an  
19 order entered today?

20 MS. WALKER: We do need an order entered today.

21 MR. BENDER: Yes, Your Honor.

22 THE COURT: And when is that order going to come in?  
23 You understand the courthouse is closed.

24 MR. BENDER: I believe that accommodations have been  
25 made with the Court to allow for the order to get -- submitted

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1 and entered, Your Honor.

2 THE COURT: Well, that depends on when it's  
3 submitted.

4 MR. BENDER: We can submit an order as soon as we get  
5 off the phone.

6 THE COURT: All right.

7 MR. POLLACK: Your Honor, this is David Pollack for  
8 certain of the landlords. I did not see, perhaps I missed it,  
9 a budget attached that is referenced in the order.

10 THE COURT: Anybody want to address that?

11 MR. BENDER: Yes, Your Honor, there is a budget. I  
12 believe it was attached, but I'll double check, and if not  
13 we'll have it submitted as well.

14 MR. JUNG: Your Honor, if I may, that budget is  
15 attached as an exhibit to the order that has been filed on the  
16 docket.

17 MR. MacMASTER: That's Exhibit B, correct, Mr. Jung?

18 MR. JUNG: I believe so.

19 THE COURT: All right.

20 MR. BENDER: And whoever asked the question, if you'd  
21 like me to send a copy of the budget to you, I'm happy to do  
22 that as well.

23 THE COURT: Let's talk about a final hearing date  
24 because your form of order requires that also. Mr. MacMaster,  
25 you think two weeks to get a --

Colloquy

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1 MR. MacMASTER: I think I'm probably going to need  
2 two weeks to get a Committee in place. I assume that we'll get  
3 the notices out either today or tomorrow. Probably tomorrow.

4 THE COURT: Right probably. All right, I'm going to,  
5 let's, counsel send the revised order in. But set the final  
6 hearing subject to Committee requesting additional time if  
7 that's necessary. I want to get this looked at as quickly as  
8 possible. February 11th at one o'clock.

9 MR. BENDER: Very good, Your Honor.

10 THE COURT: If there's objections, we don't have --  
11 an objection deadline of February 10th at 1 p.m. And that's  
12 not going to give any Committee much time, so it's with the  
13 understanding that Committee counsel and the debtor, in the  
14 midst of their negotiations can ask for additional time if they  
15 think it's necessary.

16 MR. MacMASTER: Okay.

17 THE COURT: But I want someone to take a look at that  
18 as quickly as possible. All right?

19 MR. MacMASTER: All right, thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. BENDER: Your Honor, thank you, on behalf of the  
22 debtor we greatly appreciate Your Honor accommodating us under  
23 the circumstances today.

24 THE COURT: Mr. Waldron's in court now and he and I  
25 are going to talk. We'll get these orders entered. We all

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1 appreciate what the Clerk's Office is doing to accommodate  
2 this. It's a little more difficult.

3 ATTORNEY: And the debtor seconds that appreciation.

4 THE COURT: They're going above and beyond a little  
5 bit. But that's fine. We're happy to serve. All right, I'll  
6 see everybody tomorrow then at one o'clock, correct?

7 MR. ROSEN: Thank you.

8 THE COURT: And we'll look forward to that order  
9 coming in. Thank you.

10 \* \* \* \* \*

11 C E R T I F I C A T I O N

12 I, Patricia Poole, court approved transcriber, certify  
13 that the foregoing is a correct transcript from the official  
14 digital audio recording of the proceedings in the above-  
15 entitled matter.

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/S/PATRICIA POOLE

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22 TRACY GRIBBEN TRANSCRIPTION, LLC February 11, 2014

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DATE

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